

**OFFICE OF PROFESSIONAL ACCOUNTABILITY
COMPLAINTS REPORT
December 2011
OPA Director's Monthly Message**

The Office of Professional Accountability's (OPA) monthly report provides information about Seattle Police Department (SPD) misconduct complaints that are investigated by OPA. This report includes summaries as to cases closed during the month of December 2011, along with data on the number and classification of complaints filed, with a comparison to earlier months and 2010. Monthly reports include charts showing the percentage of cases closed with different types of findings, information about the OPA mediation program, and policy review and training recommendations when made.

All complaints, classification decisions, and findings are reviewed by OPA's civilian Director and the independent civilian OPA Auditor. Civilian oversight by the OPA Director and Auditor helps ensure that complaints are properly classified and that cases referred for investigation, including those noted in this monthly report, are investigated thoroughly, fairly and objectively, and that the findings reflect the evidence available.

December 2011 Highlights

- OPA closed 200 cases involving 584 allegations in 2011, as compared to 183 cases with 368 allegations in 2010. An in-depth report analyzing 2011 complaint statistics will be published in the spring.
- 12% of cases closed through December 2011 were Sustained, resulting in discipline.
- 21% of cases closed through December 2011 resulted in a finding of Supervisory Intervention, with a referral for training or counseling.
- 21% of cases were Exonerated, while another 25% were Unfounded.

Changes to OPA's Complaint Classification and Findings Systems

A year ago, the OPA Director, OPA Auditor, and OPA Review Board (OPARB) began a joint project to review the OPA complaint classification and investigative findings systems. The classification and findings systems were often confusing for citizens, officers, and others concerned with the OPA complaint process, and the goal was to look for ways to make the process more transparent. The review resulted in a number of recommended changes outlined in a report published in August 2011.¹ The changes recommended do not impact when or how discipline is imposed, investigation timelines, the standard of proof, or any other substantive element of the disciplinary process.

While this final monthly report for 2011 uses the former classification and findings categories, the changes recommended were implemented as of January 1, 2012. Previously, OPA complaints were classified into one of five categories. Now, there are only two classifications that will be used: Investigation and Supervisor Action. As occurred previously, all allegations that are more complex, involve more serious misconduct, or involve an employee with similar prior complaints will be investigated by OPA. Complaints involving less serious issues that would not likely result in discipline

¹ See [http://www.seattle.gov/council/OPARB/reports/2011opa_classifications_findings.pdf].

will be classified for “Supervisor Action” and referred to the named employee’s supervisor for OPA directed follow up such as problem-solving or employee coaching. Once the Supervisor Action is completed, information about how the complaint was handled must be reported back to OPA. The OPA Director and OPA Auditor will continue to review all classification decisions and monitor the handling of Supervisor Actions.

Previously, there were eight possible findings when a complaint was investigated by OPA (see page 5 of this report for the list.). Under the new system that went into effect for 2012, the number of potential findings has been reduced to five, with several renamed for ease in understanding. The new findings system will continue to use the Sustained and Unfounded categories. However, findings previously called “Not Sustained” will be renamed “Inconclusive,” the “Supervisory Intervention” finding will now be labeled “Training Referral,” and “Lawful and Proper” will replace the former “Exonerated” finding. All investigations and proposed findings will continue to be reviewed by the civilian OPA Director and OPA Auditor.

OFFICE OF PROFESSIONAL ACCOUNTABILITY COMPLAINTS REPORT December 2011

December Closed Cases:

Cases involving alleged misconduct of officers and employees in the course of their official public duties are summarized below. Identifying information has been removed.

EMPLOYEE CONDUCT: LAWS

Synopsis	Action Taken
Complainant alleged that the named probationary officer criminally damaged his motorcycle that was parked in a condominium garage.	<p>Allegation and Finding:</p> <p>Administrative Violation of Law (Malicious Mischief)—Sustained</p> <p>The evidence demonstrated that the named officer engaged in conduct that constitutes the crime of Malicious Mischief 2nd degree.</p> <p>Corrective Action: Termination – Named employee resigned prior to the Chief imposing final discipline.</p>
Complainant, the 17 year old son of name employee, alleges that named employee struck him in the face during a family dispute.	<p>Allegation and Finding:</p> <p>Administrative Violation of Law (DV Assault)—Unfounded</p> <p>The evidence showed that the named employee acted solely in his capacity as a parent, and struck his son during a family dispute. Under the circumstances, the conduct of the named employee was reasonable, did not create a danger for his son, was moderate, and intended for the purpose of restraining or correcting the son who was experiencing some personal challenges.</p>

SEARCH & SEIZURE: USE OF FORCE

Synopsis	Action Taken
Complainant alleges that the named officers used unnecessary force when they held her down on the floor of the holding cell	<p>Allegation and Finding:</p> <p>2 named officers</p> <p>Unnecessary Use of Force—Administratively Exonerated</p> <p>The evidence demonstrated that the named officers were justified in using force to restrain the complainant to a bolt in the floor of the precinct holding cell and that the force they applied was reasonable and necessary. The evidence showed that the complainant's physically aggressive, assaultive, and uncooperative behavior created the need for the named officers to control and restrain complainant.</p>

EMPLOYEE CONDUCT: COMMUNICATION AND CONFIDENTIALITY

Synopsis	Action Taken
Complainant, the ex paramour of named employee, alleges that the named employee conveyed information to her about a former boyfriend of hers that was obtained by improperly accessing criminal information databases for a non-law enforcement purpose.	<p>Allegation and Finding:</p> <p>Criminal Records Access—Sustained Communication and Confidentiality—Sustained</p> <p>The evidence, including the admission of the named employee, demonstrates that the named employee improperly accessed criminal history databases to check the name of a former boyfriend of complainant and divulged that information to the complainant.</p> <p>Corrective Action: 2-days suspension without pay.</p> <p>OPA, along with D/C Nick Metz, recommended that a directive be issued reminding all employees that accessing information through any criminal justice record system must be for legitimate law enforcement purposes, that employees shall not discuss or provide criminal history record information to any person who is not a member of the criminal justice system, and that inappropriate use of dissemination of such information can result in Departmental discipline and penalties under Federal and State law, including criminal sanctions. A Departmental Directive was issued on December 6, 2011, reminding employees of their obligations with regards to criminal justice records systems.</p>

EMPLOYEE CONDUCT: PROFESSIONALISM

Synopsis	Action Taken
Complainants, involved in a disturbance to which the named officer and others were responding, allege that named employee arrested the suspect in the disturbance because he is Black. Complainants also allege that named officer was rude, used derogatory language, and failed to properly investigate the incident.	<p>Allegation and Finding:</p> <p>Professionalism-Derogatory Language—Unfounded Professionalism-Rudeness—Unfounded Biased Policing—Unfounded Failure to Investigate/Report—Unfounded</p> <p>The evidence showed that the named officer, who arrived after the suspects had been temporarily detained for investigation, was not involved in stopping the possible suspects. With regard to the allegation of rudeness, the evidence demonstrated that the named officer and other officers at the scene behaved appropriately and were not rude. The evidence, including statements from third party witnesses, did not indicate that named officer use derogatory language as alleged. Regarding the allegation that the named officer failed to properly investigate/report information associated with the incident, the evidence demonstrated that the named officer arrived later at the scene and was not the primary reporting officer.</p>

Definitions of Findings:

“Sustained” means the allegation of misconduct is supported by a preponderance of the evidence.

“Not Sustained” means the allegation of misconduct was neither proved nor disproved by a preponderance of the evidence.

“Unfounded” means a preponderance of evidence indicates the alleged act did not occur as reported or classified, or is false.

“Exonerated” means a preponderance of evidence indicates the conduct alleged did occur, but that the conduct was justified, lawful and proper.

“Supervisory Intervention” means while there may have been a violation of policy, it was not a willful violation, and/or the violation did not amount to misconduct. The employee’s chain of command is to provide appropriate training, counseling and/or to review for deficient policies or inadequate training.

“Administratively Unfounded/Exonerated” is a discretionary finding which may be made prior to the completion that the complaint was determined to be significantly flawed procedurally or legally; or without merit, i.e., complaint is false or subject recants allegations, preliminary investigation reveals mistaken/wrongful employee identification, etc, or the employee’s actions were found to be justified, lawful and proper and according to training.

“Administratively Inactivated” means that the investigation cannot proceed forward, usually due to insufficient information or the pendency of other investigations. The investigation may be reactivated upon the discovery of new, substantive information or evidence. Inactivated cases will be included in statistics but may not be summarized in this report if publication may jeopardize a subsequent investigation.

Mediation Program:

The OPA Director and OPA Auditor selected 25 cases to be resolved through the Mediation Program during December of 2011.

The high number of cases referred to mediation this month was due to an interest in alternative dispute resolution by some complainants with concerns stemming from Occupy Seattle demonstrations.

Of the 25 cases selected for the Mediation Program, 6 complainants declined to participate and in 1 case, the officer declined. 7 complainants who were involved in Occupy Seattle demonstrations have agreed to small group mediations that will be conducted in 2012, and in 2 cases, both complainants and officers have agreed to a mediation session, also scheduled in 2012. In 4 Occupy Seattle cases, the named officers were unknown and group mediation did not materialize; the complaints were forwarded to the precinct for supervisory action. There has been response to efforts to contact complainants in 4 cases, and 1 complainant withdrew his complaint.

Cases Opened (2010/2011 by Month Comparison)

	PIR		SR		LI		IS		TOTAL	
Date	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011
1/1-1/31	8	9	8	8	1	1	12	19	29	37
2/1-2/28	18	19	9	5	1	1	16	17	44	42
3/1-3/31	30	12	6	7	1	3	16	10	53	32
4/1-4/30	31	17	9	14	3	6	13	17	56	54
5/1-5/31	15	25	10	12	3	2	23	17	51	56
6/1-6/30	25	16	14	13	1	1	13	14	53	44
7/1-7/31	23	17	10	9	1	2	18	7	52	35
8/1-8/31	20	23	6	16	3	1	12	15	41	55
9/1-9/30	16	16	9	6	4	0	17	13	46	35
10/1-10/31	13	17	9	10	5	0	17	15	44	42
11/1-11/30	12	11	16	10	8	0	19	27	55	48
12/1-12/31	18	16	13	10	2	0	13	14	46	40
Totals	229	198	119	120	33	17	189	185	570	520

Complaint Classification

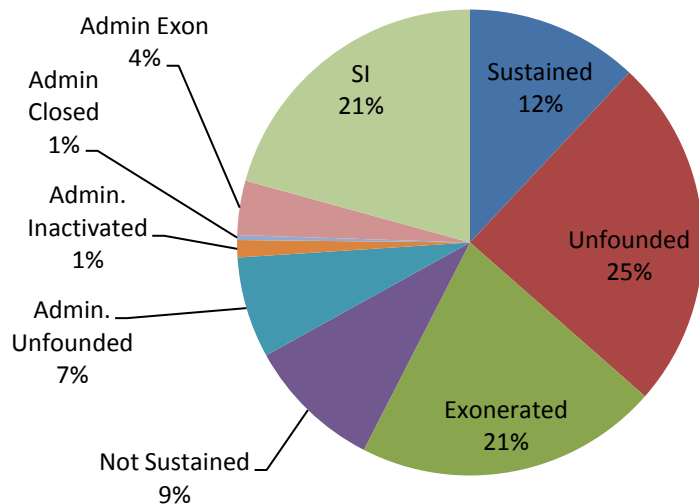
Preliminary Investigation Report (PIR) complaints involve conduct that would not constitute misconduct and are referred to the employee's supervisor for follow up.

Supervisory Referral (SR) complains are those that, even if events occurred as described, signify minor misconduct and/or a training gap. The complaint is referred to the employee's supervisor for review, counseling, and training as necessary.

Line Investigations (LI) complaints involving minor misconduct are investigated by the officer's chain of command.

Investigation Section (IS) complaints are more complex and involve more serious allegations and are investigated by OPA-IS.

Disposition of Completed Investigations
Open as of Jan 1, 2011 and closed as of December 31, 2011
N=200 Closed Cases/584 Allegations



Disposition of Completed Investigations
Open as of Jan 1, 2010 and closed as of December 31, 2010
N=183 Closed Cases/368 Allegations

